up) his rights, liabilities and responsibilities as a father (though retaining what could not be *taken* away from him, his interest in Abol's welfare). Accordingly, the defendant cannot be held liable to compensate Dato for the maintenance of Abol after Dato had taken Abol to live with him.

The plaintiff's claim is dismissed with costs.

Claim dismissed.

DANA & ANOR. v. SANDOM & ANOR.

[O.C.J. (McGilligan J.) December 2, 1963]

[Sibu — Binatang High Court Civil Suit No. 5 of 1963]

Adoption—Annulment—Special reason—Age of child —Interests of child—Adoption Ordinance (Sarawak Cap. 91), ss. 7 and 8.

This was an application by the adoptive parents for the annulment of the adoption of one R, who is now 20 years old. R had lived with the adoptive parents since he was 5 years old although the adoption was only registered when he was 17. The main ground of the applicants for the annulment was that they wished to adopt another son to help look after them and they could not do so unless the existing adoption was annulled. R himself very emphatically said that he did not want the adoption annulled.

Held: (1) the clear wishes of the adopted child, particularly one of 20 years old, must be given the very greatest respect by the Court in deciding an application for annulment. In this case as R did not want the adoption annulled and as he regarded his adoptive parents as his father and mother and the applicants' home as his home an order of annulment should not be made;

(2) the main ground put forward by the applicants was not a good or meritorious one and did not constitute a "special reason" for annulment.

CIVIL SUIT.

Parties in person.

McGilligan J.: This is an application for the annulment, under section 7 of the Adoption Ordinance, of the adoption of one Rejab anak Sandom. The application is made by the adoptive father and mother, Dana anak Ganyah and Sunah anak Silimbau. The adoption was registered on the 31st of August, 1960.

The thought that immediately occurs to the Court is that it is very late in the day to be seeking annulment of adoption, when the adopted child has reached the age of 20 years. It is only in an exceptional case that annulment would be granted at this stage, and there are here no special reasons for annulment.

In any such case as this, exceptional or not, the basic principle in which the Court must act is that set out in section 8 of the Adoption Ordinance. The section reads as follows:—

"Where there is any question whether the adoption of any child should be effected or annulled the interests of such child shall be the paramount consideration".

Here, the adopted child, Rejap anak Sandom, has lived with the adoptive parents since he was five years old (I accept his undisputed evidence on this), though the adoption was not registered (and was therefore of no legal effect) until he was seventeen.

Rejap's real mother, Empana anak Silimbau, though served with notice of to-day's hearing, has not bothered to appear. Clearly she is not very interested in what happens to him.

His real father, Sandom anak Nyuak, has appeared, and is prepared to have the adoption cancelled and to resume the legal father-son relationship which existed between him and Rejap prior to the adoption. But it is plain that he is not really very anxious to do so, and is prepared to do so only as a matter of duty.

Rejap himself, now aged 20 and a school teacher, has said very emphatically that he does not want the adoption annulled. He said he regards Rumah Munie where the applicants live as his home, and will always look upon the adoptive parents as his father and mother, even if the adoption is annulled. The clear wishes of the adopted child, particularly one of 20 years old, must be given the very greatest respect by the Court in deciding an application for annulment.

Finally there is this, that it does not seem to the Court that the main ground put forward by the applicants for the annulment — that they wish to adopt another son to help look after them and cannot do so unless the existing adoption is annulled — is a good or meritorious one. Apart from this wish to get a new son the adoptive parents have nothing against Rejap, except that he has now gone to live in his school, and does not visit them often enough. This is the sort of complaint many parents have to make about a grown-up son, and is hardly sufficient reason for casting him off.

The Court is quite satisfied that in the circumstances of the case it would be wrong to order annulment of adoption. The application is refused. No order is made as to costs.

Application refused.

UNITED MALAYAN BANKING CORPN. LTD. v. IPOH MINING CO. (M) LTD.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah J.) December 5, 1963]

[Ipoh — Federal Court Civil Appeal No. 15 of 1963]

Practice and Procedure—Application under R.S.C. O.14 in respect of money lent and interest—Refusal of judge to enter summary judgment on ground that there was a triable issue—Appeal from order of judge—Appellate court not to interfere unless special circumstances shown.

Where an application under Order 14 is for money lent and interest thereon and the judge refuses to make an order for summary judgment on the ground that

there is a triable issue or issues, the appellate court will not interfere with the decision unless special circumstances are shown.

Ho Chooi Soon v. *The Indian Oversea Bank Ltd.*(1) and *Wing* v. *Thurlow* (2) followed.

Cases referred to:—

(1) *Ho Chooi Soon* v. *The Indian Overseas Bank Ltd.* [1961] M.L.J. 86, 87.

(2) *Wing* v. *Thurlow* 10 T.L.R. 151.

(3) *Davies* v. *Rees* 17 Q.B.D. 408.

(4) *Smith* v. *Whiteman* [1909] 2 K.B. 437.

FEDERAL COURT.

N. T. Rajah for the appellant.

N. Sharma for the respondent.

Cur. Adv. Vult.

Thomson L.P.: This is an appeal from an order of Mr. Justice Neal whereby he refused to enter judgment for the appellant under Order 14.

The appellant who was the plaintiff in the original proceedings is a limited liability company carrying on the business of banking.

The respondent, who was the first defendant in the original proceedings, is a limited liability company. The second and third defendants who are not parties to this appeal are the Managing Director of the first defendant company and his wife respectively.

On 30th April, 1963, the Bank issued a specially endorsed writ against the three defendants. As against the first defendant the claim was two-fold. In the first place it was for $116,431.24 with interest, being the amount due on an overdraft. In the second place it was for a declaration of lien over certain items of mining machinery which were alleged to have been pledged as security for the overdraft. The claim against the other two defendants was in respect of a guarantee they had given on the overdraft.

The Bank's claim was based on two letters dated 1st May, 1961, and 21st August, 1962, addressed by the defendants to the Bank, which purported to set out the arrangement among the parties.

On 17th May the first defendant entered appearance and on 23rd May the Bank took out a summons for judgment against that defendant for $92,309.72 and interest, that being the balance then payable, and a declaration as asked for in the writ.

Then on 25th May the original writ was served on the second and third defendants. On 27th May both these defendants entered appearance and on the same day all three defendants filed a joint defence.

As regards the money claim the defendants alleged that payment under the agreement to the plaintiff Bank fell due only six months after demand by the plaintiff; that at the time the defendant company entered into the two agreements with the plaintiff Bank for loans it was orally agreed as a condition precedent to the liability of the defendant company under the said agreements that the plaintiff would give at least six months' notice of demand; that the liability of the defendant company did not arise till six months after demand for payment in full had been made by the plaintiff and that no such demand had been made.

It was also alleged that the two letters of 1st May, 1961 and 21st August, 1962, were bills of sale which were void for non-registration and for not being in the statutory form.

In the event the summons for judgment came on for hearing before Neal J. who dismissed it for reasons which, on the view I have taken of the matter, I do not find it necessary to discuss here beyond saying that he took the view, which has not been questioned, that as regards the defence that the letters in the case were bills of sale there was a triable issue and that as regards the defence of a parole arrangement to modify the original arrangement between the parties by providing for six months notice of demand evidence of this was admissible and on that footing there was also a triable issue.

Against that decision the plaintiff Bank has seen fit to appeal rather than adopt the course which would probably have been more expeditious and economical of allowing the matter to go to trial.

At this stage I remind myself of what was said by this Court in the case of *Ho Chooi Soon* v. *The Indian Overseas Bank Ltd.*(1) where I myself said:—

> "both justice and policy should compel us to follow what was certainly at one time the rule of the Court of Appeal in England as would appear from the case of *Wing* v. *Thurlow.*(2) That rule was that the Court of Appeal would not interfere in such a case unless special circumstances are shown."

My view is that the Bank is in the dilemma that for the money claim it must rely either:—

(a) on the letters; or

(b) on some collateral parole arrangements and the customs of bankers relating to overdrafts.

If they rely on the letters then their claim cannot be disposed of until the questions of whether or not these letters are bills of sale or, if they are bills of sale, if they are subject to the provisions of the Bills of Sale Ordinance are disposed of. If they are not bills of sale then from the banker's point of view all is well. If they are bills of sale and if they are subject to the provisions of the Ordinance they are clearly not in the statutory form and are therefore void for all purposes (see *Davies* v. *Rees* (3) and *Smith* v. *Whiteman* (4)).

On the other hand if the Bank is relying on some collateral parole arrangement then parole evidence of the alleged provision for six months' notice is clearly admissible. On this basis, then, the claim cannot be decided until the question of fact as to the six months' provision is tried out and decided.

I would only add that I am not overlooking the consideration that if the Bank had been suing for money had and received the position might be different. But it is not suing for money had and received — it is suing for money lent and stipulated interest.

For these reasons I would dismiss the appeal with costs.

Barakbah C.J. (Malaya) and **Tan Ah Tah J.** concurred.

Appeal dismissed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; N. Sharma.*

TAN KHIO SOEI & ANOR. v. BAN HIN LEE BANK LTD.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) & Wee Chong Jin C.J. (Singapore)) December 17, 1964]

[Singapore — Federal Court Civil Appeal No. 40 of 1963]

Landlord and Tenant—Termination of contractual tenancy—Statutory tenancy—Death of statutory tenant—Whether rights of deceased statutory tenant passed to his estate—Control of Rent Ordinance (Cap. 242), ss. 27 and 28.

Under section 27(a) of the Control of Rent Ordinance a person can claim to be a statutory tenant if (i) he is a tenant of the premises (ii) his tenancy has been determined (iii) he has remained in possession after determination of his tenancy and (iv) the provisions of the Ordinance prevent him being deprived of possession by the landlord of the premises. So long as the statutory tenant continues to fulfil the four conditions specified in section 27(a) he remains a statutory tenant and *ex hypothesi* his statutory tenancy cannot be determined by his landlord giving him notice under section 28(b) although it can be determined by the statutory tenant giving a notice to the landlord. Once a statutory tenant ceases to fulfil one of the four conditions mentioned in section 27(a) his tenancy ceases to be a statutory tenancy and therefore section 28(b) has no application because it only applies to statutory tenancies.

The right of a statutory tenant is a purely personal right to possession of the premises. This right is extinguished with the death of the statutory tenant.

Cases referred to:—

(1) *Ramasamy Pillai* v. *Meyappa Chettiar* [1955] M.L.J. 105, 106.

(2) *Keeves* v. *Dean* [1924] 1 K.B. 685, 690.

(3) *John Lovibond & Sons Ltd.* v. *Vincent* [1929] 1 K.B. 687.

FEDERAL COURT, Appeal from the judgment of Buttrose J., [1963] M.L.J. 275.

L. A. J. Smith for the appellants.

A. P. Godwin for the respondents.

Cur. Adv. Vult.

Thomson L.P.: The plaintiffs in this case and the respondents to the present appeal are the Ban Hin Lee Bank Limited who are the owners of premises at No. 52, Circular Road, Singapore, which consist of a ground floor and two upper floors. The first defendant and appellant is occupying the ground and first floors of the premises in question and the second defendant, who is not an appellant, and the third defendant, who has appealed, are the administrators of the estate of one K. Shaik Abdul Kader who died intestate in India on 24th August, 1947, and who carried on business on the ground floor and until 1941 resided with his assistants on the two upper floors. The third defendant is now residing on the second floor.

The facts so far as they are now material are not in controversy.

Some time before the last war the deceased became a monthly tenant of the premises. In 1941 he went to India and did not at any time return to Singapore although a business continued to be conducted on the Circular Road premises in his name. The contractual tenancy was terminated by a notice to quit which expired on 31st October, 1946, and the Bank then commenced proceedings to obtain possession on the ground that they required the premises for their own use. These proceedings were unsuccessful and rent continued to be paid and accepted in the name of Shaik Abdul Kader.

After Shaik Abdul Kader's death, which did not become known to the Bank until some time in 1960, his business was carried on by one M. M. Ali who was granted Letters of Administration to the estate of the deceased on 5th April, 1948. Some time in 1948 the third defendant, the third son of the deceased, who was then a boy of 17, came to Singapore from India for the first time in his life. Since then he has lived part of the time in India and part of the time in Singapore and when in Singapore he has resided on the premises.

Then in 1960 a number of things happened. At a date which is in dispute but is not very material the Bank learned for the first time that the deceased had died in 1947. On 25th May the third defendant and the second defendant, who is his brother, obtained an order from the Court revoking the grant of administration in favour of M. M. Ali and making a grant in their own favour jointly. On 1st November, when he knew that the present proceedings were about to be commenced the third defendant purported to sublet the ground and first (floors) of the premises to the first defendant who went into occupation. And finally, on 11th November, the Bank issued the writ in these proceedings in which they claimed against all three defendants an injunction and damages for trespass, a declaration that the right title and interest of K. Shaik Abdul